

ORIGINAL

REDACTED FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, DC

In the Matter of

Petition of Verizon New England for
Forbearance Pursuant to 47 U.S.C. § 160(c) in
Rhode Island

WC Docket No. 08-24

FILED/ACCEPTED
MAR 28 2008
Federal Communications Commission
Office of the Secretary

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc., on behalf of its affiliate Cox Rhode Island Telcom, L.L.C. (collectively, "Cox"), hereby submits these comments in response to the forbearance petition submitted by Verizon New England ("Verizon") in the above-referenced proceeding.¹

I. Introduction

Verizon's new Rhode Island Petition is a repackaged version of its forbearance request for the Providence MSA that the Commission summarily rejected less than four months ago.² The Petition solves none of the shortcomings of Verizon's previous effort and includes new flaws that preclude granting the relief Verizon seeks. As the Commission's fifteen-month Six MSA Proceeding demonstrated, Rhode Island is progressing towards becoming a fully developed competitive market, but is not there yet.

As in the Providence Petition, Verizon relies almost exclusively on competition from Cox to allege that forbearance is warranted in Cox's Rhode Island service territory.³ While Cox has

¹ Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Docket No. 08-24, filed February 14, 2008 (the "Petition"). See also Pleading Cycle Established for Comments on Verizon New England's Petition for Forbearance in Rhode Island, *Public Notice*, WC Docket No. 08-24, DA 08-469 (released February 27, 2008) (the "Rhode Island Petition").

² See Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, *Memorandum Opinion and Order*, 22 FCC Rcd 21293 (released Dec. 5, 2007) (the "Six MSA Order"). Verizon's Petition covering the Providence metropolitan statistical area is hereinafter referred to as the "Providence Petition."

³ The only difference between the area covered by the Rhode Island Petition and the Providence Petition is that the

REDACTED FOR PUBLIC INSPECTION

enjoyed success in Rhode Island, Cox does not duplicate Verizon's ubiquitous network. Moreover, Cox's enterprise market facilities deployment and penetration do not match Verizon's. Indeed, Verizon remains the dominant telephone provider in Rhode Island, with the majority of retail customers and a commanding share of the enterprise market. Verizon's evidentiary showing elides these facts, overstating the number of customers and the geographic areas Cox and its other competitors actually serve.

Verizon also does not specify precisely where sufficient competitive facilities are deployed to justify a Commission grant of forbearance under the standards established by the *Omaha Forbearance Order*,⁴ the *Anchorage Forbearance Order*⁵ and the *Six MSA Order*. Instead, Verizon requests a blanket forbearance ruling covering nearly all of Rhode Island.⁶ Verizon substantiates this request by stating that because "Cox provides telephony services throughout the entire state of Rhode Island, it is unnecessary to analyze cable facilities coverage at a more granular geographic level."⁷ This argument is inconsistent with prior FCC precedent, which clearly establishes the wire center as the appropriate geographic unit for analysis, and just as clearly establishes that forbearance is not warranted unless competitive services are available to at least 75 percent of a given wire center.⁸ The more granular analysis is necessary because competitive facilities are built to serve

Providence Petition included areas in Massachusetts served by Comcast that are part of the Providence Metropolitan Statistical Area. By denying the Providence Petition, the Commission held that forbearance was not justified in all the territory covered by the Rhode Island Petition.

⁴ Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223, *Memorandum Opinion and Order*, 20 FCC Rcd 19415 (2005) (the "*Omaha Forbearance Order*"), *aff'd*, *Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

⁵ Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area, WC Docket No. 05-281, *Memorandum Opinion and Order*, 22 FCC Rcd 1958 (2007) (the "*Anchorage Forbearance Order*"), *appeals dismissed*, *Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. 2007).

⁶ Verizon's Petition omits Block Island, which apparently enjoys no competitive telephone service. See Rhode Island Petition at n.9.

⁷ See *id.* at 7.

⁸ See, e.g., *Omaha Forbearance Order*, 20 FCC Rcd at 19444; see also Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting Qwest Corporation Forbearance Relief in the Omaha Metropolitan Statistical Area, *Public Notice*, 22 FCC Rcd 13561 (2007) (disclosing, after receiving Cox's consent to disclose the coverage threshold in the Qwest Omaha Forbearance Order, that Qwest was granted unbundling relief in

REDACTED FOR PUBLIC INSPECTION

specific locations;⁹ only Verizon's network is designed to serve all of Rhode Island. Despite Verizon's claims, Cox can and already has provided **[Begin Confidential]**

¹⁰ **[End Confidential]**

Verizon provides no reason for the Commission to revisit its finding in the *Six MSA Order* "that the record evidence does not satisfy the section 10 forbearance standard with respect to any of the forbearance Verizon requests."¹¹ As the *Six MSA Order* showed, demonstrating 75 percent facilities coverage is necessary, but not sufficient to justify forbearance relief.¹² Therefore, even if Verizon could show sufficient facilities build-out in all Rhode Island wire centers, the competitive landscape still would not support the relief Verizon requests. The Rhode Island petition contains nearly the same data and arguments that the Commission rejected in the *Six MSA Order* and it should be dismissed as duplicative or denied on the merits.¹³

II. Verizon Does Not Correct the Shortcomings the Commission Identified in the Providence Petition.

The Rhode Island Petition essentially seeks the same relief as the recently-rejected Providence Petition, based on a nearly identical evidentiary showing. As in the Providence Petition, Verizon seeks relief from: (1) the *Computer III* rules; (2) dominant carrier regulation; and (3) loop and transport unbundling. Although the Commission found in the *Six MSA Order* that Verizon's request for relief from the *Computer III* rules was entirely unsupported by the record or any

those wire center service areas where, among other things, Cox's voice-enabled cable plant covered more than 75 percent of the end-user locations that were accessible from those wire centers).

⁹ See, e.g., *Omaha Order*, 20 FCC Rcd at 19428, n.71.

¹⁰ See Letter from J.G. Harrington, Counsel for Cox Communications, Inc., to Marlene Dortch, Secretary, FCC, Attach. at 1, WC Docket No. 06-172 (November 21, 2007).

¹¹ See *Six MSA Order*, ¶ 1.

¹² See *id.*, ¶ 36.

¹³ Because the Rhode Island Petition amounts to a repetitive filing and therefore puts an unfair burden on both the Commission and the parties, Cox fully supports the Motion to Dismiss filed by the CLECs and urges the Commission to grant it without delay. See Pleading Cycle Established for Comments on Motion to Dismiss or Deny Verizon Rhode Island Petition for Forbearance, *Public Notice*, WC Docket No. 08-24, DA 08-651 (rel. March 21, 2008).

~~REDACTED FOR PUBLIC INSPECTION~~

argument,¹⁴ the Petition makes no effort to justify relief from those requirements in this proceeding and offers no explanation for how its evidence supports forbearance from these rules. There Commission should summarily deny this unexplained and unjustified request.

Verizon's request for relief from dominant carrier regulation is similarly defective. In the *Six MSA Order*, the Commission noted that facing facilities-based competition from a single cable operator is insufficient to justify relief from dominant carrier regulations governing mass-market services except in extreme cases where the incumbent carrier's market share dips below 50 percent or the level of at least one of its competitors.¹⁵ Yet the Petition alleges significant facilities-based competition from only a single cable operator (Cox) and does not claim that any competitors have gained a greater market share than Verizon continues to possess. Although Verizon does claim its residential market share has dropped below 50 percent, it only gets there by using an estimate of "cut the cord" wireless customers that probably is overstated by 35 percent or more.¹⁶ Verizon's Petition provides no justification for a different result on its non-dominance claim than it obtained in the *Six MSA Order*.

Verizon's request for forbearance from its loop and transport unbundling obligations also does not meet the requirements of the *Six MSA Order* and previous Commission forbearance orders. Verizon seeks to justify this request by noting that the Commission found in the *Six MSA Order* that future forbearance might be justified in wire centers where competitive facilities deployment exceeds 75 percent.¹⁷ Verizon does not mention, however, the Commission already was informed which Rhode Island wire centers surpassed the 75 percent competitive facilities threshold in the *Six MSA* proceeding.¹⁸ Moreover, Verizon is not proposing that that the Commission grant the

¹⁴ *Six MSA Order*, ¶ 45.

¹⁵ *Id.*, ¶¶ 29-30.

¹⁶ *See infra* at 8.

¹⁷ Rhode Island Petition at 5 (citing *Six MSA Order*, ¶ 36).

¹⁸ Verizon acknowledges that Cox provided this data to the Commission. Rhode Island Petition at n.9.

Petition for wire centers where the 75 percent threshold is met; instead it proposes grant on a state-wide or rate center basis.¹⁹ The Commission, however, already determined that Verizon does not meet the forbearance criteria for any wire center in Rhode Island, and that necessarily means that Verizon does not meet the criteria for any rate center or for the state as a whole. There is no reason to conduct an entire proceeding to confirm that the same evidence fails to justify forbearance in the same territory, regardless of how it is divided.²⁰

In the *Six MSA Order*, the Commission found that even where a competitor meets the 75 percent facilities deployment threshold, showing competition from a single cable operator and piecemeal competition from "cut-the-cord" wireless providers and assorted other minor competitors is not enough to justify forbearance from loop and transport unbundling either for mass-market or enterprise services.²¹ Verizon returns with a Petition that makes almost precisely the same showing the Commission rejected. As demonstrated below, Verizon has identified no change in the market that would justify a different result than the *Six MSA Order* just 115 days ago.

III. Verizon Identifies No Change in the Rhode Island Market That Would Justify a Result Different From the *Six MSA Order*.

As in the Providence Petition, Verizon's sole premise for its request for certain pricing flexibility and other regulatory relief is its claim that there is rampant competition in the Rhode Island local exchange telecommunications market. Verizon's Rhode Island Petition and accompanying declarations, however, are replete with attempts to paint an overly optimistic picture of the current state of competition. Verizon's presentation is inaccurate because it fails to recognize that Verizon remains the dominant provider, with a clear majority of residential lines, a

¹⁹ Verizon claims that wire centers are not an appropriate geographic unit because Cox previously represented that it typically does not track customers on a wire center basis. The Commission has relied upon Cox's wire center approximations in the past and Verizon provides no reason why it should not continue to do so.

²⁰ Verizon's claim that wire centers are not the appropriate geographic unit because Cox previously has represented that it serves all of Rhode Island is meritless. Petition at 6-7. The appropriate forbearance standard is not governed by Cox's statements in proceedings before other regulatory agencies or on its website. Cox never has represented that it surpasses the 75 percent facilities deployment threshold in every wire center in the state.

²¹ See *Six MSA Order*, ¶¶ 37-42.

commanding enterprise market share, and the only ubiquitous network in the state.

A. Verizon Continues to Exaggerate Residential Competition in Rhode Island.

Verizon exaggerates both Cox's mass market facilities deployment and the extent of its market penetration. It also fails to allege, let alone show, that Cox's deployment or market share have changed appreciably since the Commission denied the Providence Petition. In terms of deployment, Verizon claims that "Cox easily meets the coverage threshold test in Rhode Island, where Cox has deployed telephony services throughout its footprint. This is true both for the state as a whole and for each individual rate center within the state . . ."²² Cox has not, however, engaged in any large-scale facilities build-out since the Commission considered the Providence Petition, so Verizon is just resubmitting the evidence that led the Commission to deny the Providence petition. Moreover, although Cox is the only major residential competitor that Verizon identifies by name or for whom Verizon even attempts to quantify the number of lines served, Verizon's own estimate of Cox's subscriber numbers falls far short of the **[Begin Confidential]**

[End Confidential] overall competitive penetration Verizon claims.²³ Indeed, by Verizon's own admission, Verizon remains the largest residential competitor in the market **[Begin Confidential]** **[End Confidential]**.

Verizon also fails to substantiate its claims that the mass market in Rhode Island has a wide range of competitive alternatives from cable, cut-the-cord wireless, wholesale and resale.²⁴ Indeed, Verizon barely attempts to quantify the number of lines served by wireline competitors other than Cox. This is unsurprising because no regulatory authority that has looked at Rhode Island has found a significant facilities-based competitor in the residential market other than Cox. In its most

²² Rhode Island Petition at 5-6.

²³ As described below, Verizon seeks to make up the difference almost entirely through its estimation of the number of "cut the cord" wireless subscribers in Rhode Island. The best evidence indicates that Verizon's estimate on this point is likely inflated by 35 percent or more. *See infra* at 8.

²⁴ Rhode Island Petition at 13.

REDACTED FOR PUBLIC INSPECTION

recent proceeding addressing residential alternative telecommunications regulation, the Rhode Island Public Utilities Commission ("RIPUC") observed, "... in the residential market, VZ-RI is primarily competing with one full facilities-based CLEC, Cox."²⁵ This is the case because in Rhode Island, the resale method of entry in the local exchange market has proven impossible due to impossibly thin profit margins. As the RIPUC has found, "... the provisioning of UNE-P at TELRIC rates is a thing of the past due to recent FCC decisions."²⁶ Thus, the RIPUC has concluded that traditional wireline CLECs are simply not a competitive factor in Rhode Island. Verizon provides no basis for the Commission to disagree.

Moreover, although Verizon devotes a great deal of attention to alleged "cut the cord" wireless competition, it provides no evidence that significantly more wireless customers have "cut the cord" since the FCC denied the Providence Petition.²⁷ Verizon relies solely on an estimate from the Centers for Disease Control and Prevention ("CDC") that 13.6 percent of households nationwide have replaced their wireline service with wireless.²⁸ As noted by several other competitive LECs in their Motion to Dismiss the Rhode Island Petition, regional research in the same study suggests that the percentage of households in Rhode Island that have "cut the cord" is about 35 percent lower than the national average reported by the CDC.²⁹ Therefore, the

²⁵ See In re: Verizon-Rhode Island's Successor Alternative Regulation Plan, Docket No. 3692 (RIPUC released March 17, 2006) ("Residential Alternative Regulation Order").

²⁶ See *id.* at 26.

²⁷ Petition at 12-15. Verizon also continues to count lines "lost" to its affiliate Verizon Wireless as lines lost to a competitor. While Verizon may be required by accounting rules to separate its wireless revenues, the two parts of the business are inextricably intertwined.

²⁸ Petition at 12 (citing Stephen J. Blumberg & Julian V. Luke, Div. of Health Interview Statistics, Nat'l Ctr. for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, January-June 2007*, at 2 (December 10, 2007) (the "Wireless Substitution Study")).

²⁹ See Motion to Dismiss or, in the Alternative, Deny Petition for Forbearance, Access Point, Inc., *et al.*, WC Docket No. 08-24 at 8 (filed March 17, 2008) (citing *Wireless Substitution Study*, n.5 (finding that in the northeastern states, which includes Rhode Island, the "cut the cord" rate is about 8.8 percent)). Moreover, the Commission itself recently noted that most households do not view wireless services as a substitute for wireline telephone service. See High Cost Universal Service Support, WC Docket No. 05-357, CC Docket No. 96-45, FCC 08-4 ¶ 9 (released January 29, 2008) (citing 2006 Commercial Mobile Services Report, 21 FCC Rcd at 11027, ¶ 205 (citing survey reporting that only approximately 8 percent of U.S. households relied exclusively on wireless phones in 2005)).

REDACTED FOR PUBLIC INSPECTION

Commission's conclusion in the *Six MSA Order* accepting the CDC's national average likely led it to overstate the effect of "cut the cord" wireless competition in Rhode Island.³⁰ Verizon therefore presents the Commission with a residential competitive landscape in Rhode Island that is no more competitive than what the Commission considered when it denied the Providence Petition.³¹ The Commission should reach the same result here.

B. Verizon Remains the Dominant Provider of Enterprise Services.

While Cox undoubtedly has made progress as a facilities-based competitor, its success in the residential market has not diminished Verizon's overall market dominance because Verizon retains a commanding position in the enterprise market. Despite Verizon's claims, Cox's network in Rhode Island is far from ubiquitous, particularly in business areas that are not immediately adjacent to residential communities. Even when Cox's transport network passes a building, facilities construction often is necessary to reach potential customers. Significant capital investment and construction time are required for Cox to continue to expand its network to individual businesses, which often are unwilling to pay that expense or wait for construction. Consequently, Cox serves

[Begin confidential]

[End Confidential] the number of business lines

Verizon serves in Rhode Island and [Begin Confidential]

[End Proprietary] the

number of business lines Verizon claims are served by its Rhode Island competitors.³² Indeed,

Cox's network passes only about [Begin Confidential]

[End Confidential] and it serves

[Begin Confidential]

[End Confidential] the approximately 44,000

businesses in Rhode Island. If Verizon's claims are to be believed, there must be other enterprise

³⁰ See *Six MSA Order*, App. B, n.2.

³¹ The Commission consistently has rejected Verizon's efforts to rely on "over-the-top" voice over IP providers, see Petition at 16-17, because "there are no data in the record that justify finding that these providers offer close substitute services." *Six MSA Order*, ¶ 23. Verizon provides no reason for the Commission to deviate from that rule in this case. Likewise, Verizon's heavy emphasis on its decline in residential lines served since 1999, see Petition at 17-20, has consistently been rejected by the Commission as evidence of a competitive market justifying forbearance. *Six MSA Order*, ¶ 32 (citing *Anchorage Forbearance Order*, 22 FCC Rcd at 1975 & n.88). As Verizon provides no reason for the Commission to abandon its previous reasoning, the Commission should reaffirm that approach in this case.

³² See Rhode Island Petition at 30, 31.

REDACTED FOR PUBLIC INSPECTION

providers offering substantial competition to Verizon, but Verizon does not identify who they are. Indeed, Verizon treats its other alleged enterprise competitors as afterthoughts and makes little effort to quantify the extent to which they contribute to enterprise competition. In any case, as with its residential competition showing, Verizon provides no evidence of any market change that would justify grant of forbearance for enterprise services today when the Commission denied that relief only four months ago.³³

Cox's experience shows that the market for business service competitors is deteriorating. Verizon's Petition relies on the impact of other competitive LECs that continue to rely on inputs from Verizon, such as access to UNE loops or DS1/DS3 special access arrangements. That market, however, is disappearing, and forbearance only would accelerate its decline. Further, when it deregulated business services, the RIPUC relied on the choices offered by no less than six competing CLECs that used their own switches combined with access to Verizon's loops and transport facilities.³⁴ Since that time, many of these CLECs have stopped competing against each other entirely, and have instead merged their existing networks and customers. For instance, three CLECs, Conversent Communications, LLC, CTC Communications and Choice One Communications recently completed a merger in July 2006 to form One Communications. This has effectively cut the number of UNE based CLECs in Rhode Island from six to four. It remains to be seen whether these remaining CLECs can survive in the current environment of rising prices for wholesale inputs, the scaling back of TELRIC-based UNE loop and transport rates, and the

³³ Verizon's business market showing relies on several discredited arguments. For example, Verizon continues to attempt to rely on fiber deployment maps from carrier web sites and various other sources to demonstrate the existence of ubiquitous competitive facilities. Petition at 27-28. The Commission repeatedly has rejected this evidence because it is imprecise, unreliable, and uninformative. *Six MSA Order*, ¶ 40. Verizon's speculative citation to potential WiMAX competition is equally irrelevant to the Commission's consideration because that competition simply does not exist today. Petition at 28-29. Finally, Verizon's attempt to use its decrease in lines served as evidence of enterprise competition, *see* Petition at 29-30, was rejected out of hand in the *Six MSA Order* and Verizon offers no justification for considering it here. *Six MSA Order*, ¶ 39.

³⁴ In re: Verizon-Rhode Island's Alternative Regulation Plan, Docket No. 3445 at 47 (RIPUC released March 31, 2003) ("Business Alternative Regulation Order").

REDACTED FOR PUBLIC INSPECTION

elimination of UNE-P.³⁵ Indeed, Cox's business unit is currently experiencing a sharp spike in churn from companies going out of business, another factor that makes it difficult for competitors to thrive.

The Commission was right when it determined that the enterprise market in Rhode Island required denial of the Providence petition. Verizon has responded to that denial by providing the Commission with essentially the same information in a slightly different form. It has provided no new information, however, that would justify a different outcome.

IV. Conclusion

While Cox supports deregulation where it is warranted, the Commission should not reverse the strides competitors have made toward establishing sustainable but still emerging competition in the Rhode Island market. The Commission should deny the requested forbearance.

Respectfully submitted,

Cox Communications, Inc.



J.G. Harrington
Jason E. Rademacher

Its Attorneys

Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
(202) 776-2000

March 28, 2008

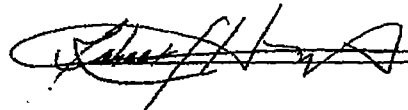
³⁵ The national data is not encouraging for these UNE based CLECs. The FCC's most recent trends in the Telephone Report shows that the number and percentage of ILEC switched access lines that are provided to UNE-based CLECs has declined steadily. *Local Telephone Competition: Status as of June 30, 2007*, Industry Technology and Analysis Division, Wireline Competition Bureau, released March 2008, at Table 4 and Chart 4.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Petition of Verizon New England) WC Docket No. 08-24
For Forbearance Pursuant to)
47 U.S.C. § 160(c) in Rhode Island)

DECLARATION OF ROBERT J. HOWLEY

1. My name is Robert J. Howley and I am Director, Regulatory Affairs for Cox Rhode Island Telcom, L.L.C.
2. I have read the foregoing Comments of Cox Communications, Inc. (the "Comments") in the above-captioned matter and I am familiar with the contents thereof.
3. I declare under penalty of perjury that the facts contained herein and within the foregoing Comments are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Comments are well grounded in fact and that they are not interposed for any improper purpose.



Robert J. Howley
Director, Regulatory Affairs
Cox Rhode Island Telcom, L.L.C.
9 J.P. Murphy Highway
West Warwick, RI 02893

Dated: March 28, 2008

(401) 615-1588

REDACTED FOR PUBLIC INSPECTION

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow Lohnes PLLC, do hereby certify that on this 28th day of March, 2008, copies of the foregoing Comments of Cox Communications, Inc. were served via hand delivery to the following:

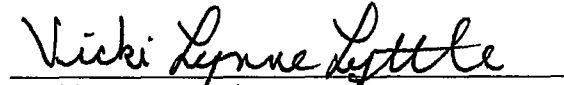
Marlene H. Dortch, Esq.
Office of the Secretary
Federal Communications Commission
445 12th St., SW
Suite TW-A325
Washington, DC 20554

Jeremy Miller
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tim Stelzig
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Best Copying and Printing, Inc.
Portals II
445 12th St., SW
Room CY-B402
Washington, DC 20554


Vicki Lynne Lyttle